

REMARKS/ARGUMENTS

The Examiner has rejected claims 1-16 under 35 U.S.C. 112, second paragraph, on the grounds set forth in paragraph 4 of the Office Action. Applicant has amended these claims, specifically by clarifying that a single frame is being referred to, and by providing proper antecedent basis for the terms noted by the Examiner in claims 1, 4, and 8. The rejection of claims 1-16 under 35 U.S.C. 112 is accordingly traversed.

The Examiner has rejected claims 1-7 and 12-15 under 35 U.S.C. 102(b) as being anticipated by Wilburn. Applicant respectfully traverses this rejection as follows.

The Examiner first argues that Wilburn's frame "is capable of being secured to the side of a tree (unillustrated)". Applicant submits that the tree is unillustrated because Wilburn does not mention the possibility of a tree-mount, only ground-mounting (Figs. 1-9, col. 3, lines 41-45 "forced into the earth to anchor the enclosure") and raft-mounting (Fig. 10, col. 8, lines 35-37 "supported on a floating base or raft"). Wilburn's ground- and raft-mounting "base" (stabilizing arms 24 and 34, the ground-penetrating points of posts 38, end plates 8, sheet metal floor 20) neither discloses nor suggests applicant's baseless, tree-supported frame as claimed in claim 1. Applicant has amended claim 1 accordingly to clarify this distinction, first by more clearly setting forth the invention's tree-mounting capability with a positive structural recitation of "tree-securing means", and by clarifying the baseless nature of the lower end of the vertical frame "adapted to be held above the ground" when the frame is secured to the side of a tree.

The Examiner appears to be incorrect in describing Wilburn as having a hanging canopy and lower canopy support arms as claimed. Wilburn uses fabric panels 126, 128 stretched between upright (vertical) ground-supported posts 38 and 44, the fabric panels

secured at their lower edges to a floor panel 124 mounted on ground stabilizer bars 34 (see, for example, col. 6, lines 6-28), contradicting the Examiner's assertion that Wilburn has an "open bottom ... with a lower edge hanging below the seat". Applicant has accordingly amended claim 1 to clarify what was meant by "laterally extending" canopy support arms, and to more clearly distinguish the "hanging" nature of the canopy. Applicant has further amended claim 1 to distinguish the canopy support arms as cantilevered (free-ended) and flat-stowable against the frame.

The rejection of claim 1 under 35 U.S.C. 102(b) in view of Wilburn is accordingly believed traversed, along with claims 2-7 and 12-15 dependent thereon.

With respect to the rejection of claim 2, applicant respectfully submits that Wilburn (as noted above) simply does not have structure corresponding to applicant's claimed lower canopy support arms, and further submits that the spacing of Wilburn's lower canopy uprights 38 is not greater than the spacing of the upper canopy supports 94, 116 as argued by the Examiner. The Examiner relies on Fig. 5 for the rejection, but Fig. 1 shows the upper canopy and the outer arms 116 of the upper canopy supports to be at least as widely spaced as lower posts 38 and stabilizer bars 34; Fig. 4 shows the forward regions of the upper canopy cut off, implying greater spacing than Fig. 5; Fig. 5 appears to be only a partial section of the rear part of the upper canopy and rearmost section of the upper supports, and so is not a complete view of the width of the upper canopy supports; and, Wilburn's teaching of an enclosure with an enclosed floor and the use of a fueled Coleman heater on the floor (col. 6, lines 28-44) make an upper canopy that does not fully cover the enclosure as defined by bars 34 and 38 unlikely, since rain would flood the closed-floor enclosure.

With respect to claim 3, the Examiner is incorrect that posts 38 extend further from Wilburn's frame than upper extensions 116. Fig. 3 clearly shows upper extensions 116, and the forward edge of canopy 122, to extend laterally at least as far, if not farther, than posts 38 and the lower enclosure panels. Wilburn states that "extensions 116 ... extend forwardly a distance slightly greater than that of the forward stabilizing arms 34" (col. 5, lines 43-45).

With respect to claims 4 and 5, since Wilburn's upper canopy arms diverge (col. 5, lines 47-49) to a point apparently as widely-spaced as the lower enclosure bars, and since Wilburn's upper canopy 122 clearly extends out as far if not farther than the lower enclosure, Wilburn's enclosure opening is clearly not triangular as claimed, and is unlikely to be rearwardly-angled from bottom to top as claimed given the small amount of adjustment shown (canopy cover 122 "may be elevated slightly" col. 5, lines 64-67). Furthermore, Wilburn's discontinuous upper canopy or cover 122 and lower enclosure panels 126, 128 do not appear to define a "*front* opening" as claimed. To further distinguish applicant's claimed front opening from Wilburn, claim 4 has been amended to recite a "planar" front opening between the upper and lower canopy support arms and defined in part by the sidewall portions of the canopy.

With respect to claim 5, Wilburn does not show or suggest the lower canopy portion extending laterally beyond the upper portion of the canopy, as claimed.

With respect to claims 6 and 7, these claims have been amended to distinguish the telescoping, pivoting, flat-stowable nature of applicant's claimed canopy support arms from the complicated breakdown and disassembly required of Wilburn's posts and extensions, as described in col. 7, lines 1-26.

The Examiner has rejected claim 16 under 35 U.S.C. 103(a) in view of Wilburn and Radig, arguing that Radig shows a canopy hanging below “a frame member 14”, and that it would have been obvious to modify Wilburn with such a below-hanging canopy “to provide better wind protection for the seat occupant and also to keep heat within the blind.” But Wilburn’s enclosure is floored, and his enclosure panels must stop at the ground-based floor, and so the Examiner’s proposed modification to Wilburn is not possible and therefore not obvious. Radig also shows a ground-mounted blind, and his canopy appears to hang only below the seat, not the lower end of the (ground-mounted) frame. Applicant has additionally amended claim 16 to clarify the baseless, tree-mounted position of the frame to clarify the nature of the canopy hanging below the frame. The rejection of claim 16 is accordingly traversed.

The Examiner has rejected claim 19 under 35 U.S.C. 103(b) [note: applicant assumes the Examiner meant 103(a)] as being anticipated by Hodnett in view of Wilburn. Applicant has substantially amended claim 19 in a manner similar to claim 1, but without the upper/lower canopy arm limitations and with the canopy roof limitation of claim 19 given a more structural definition. The rejection of claim 19 is accordingly traversed.

Applicant thanks the Examiner for the indication of allowability for claims 8-11, and has rewritten them in independent form as suggested by the Examiner, with a change to the “in the plane” language of claim 8 that the Examiner should find acceptable.

The application is now believed to be in condition for allowance, and such is respectfully requested. Should the Examiner have any questions concerning this response, she is invited to contact applicant's undersigned attorney at 231-932-9752.

Respectfully submitted,


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